

HOUSE BILL 1875

By McDonald

AN ACT to amend Tennessee Code Annotated, Title 70,  
Chapter 4, relative to hunting.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 70, Chapter 4, is amended by adding the following language as a new Part 6:

§ 70-4-601.

(a) It is an offense for any person to engage in the act of hunting with a firearm while:

(1) Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system; or

(2) The alcohol concentration in such person's blood or breath is eight-hundredths of one percent (.08 %) or more.

(b)

(1) It is an offense for any person age under age twenty-one (21) to hunt with a firearm while:

(A) Under the influence of any alcohol;

(B) The alcohol concentration in the person's blood is more than two hundredths of one percent (.02%);

(C) Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system;  
or

(D) Under the combined influence of alcohol and any other drug set out in subdivision (b) (1)(C) to a degree which makes the person's hunting ability impaired.

(2) This section establishes the offense of underage hunting with a firearm while impaired for any person under age twenty-one (21). The offense of underage hunting with a firearm while impaired is a lesser included offense of hunting while intoxicated.

(c) For the purpose of this section, "drug producing stimulating effects on the central nervous system" includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.

(d) The fact that any person who hunts with a firearm while under the influence of narcotic or barbituric drugs, is or has been entitled to use such drugs under the laws of this state, shall not constitute a defense to the violation of this section.

§ 70-4-602.

(a)(1) A person convicted of a violation of § 70-4-601(a) commits a Class A misdemeanor and:

(A) Upon the first conviction shall be fined not less than three hundred fifty dollars (\$350) nor more than one thousand five hundred dollars (\$1,500); be confined in the county jail or workhouse for forty-eight (48) hours; and the court shall prohibit such person from hunting, fishing or trapping in this state for a period of one (1) year. In addition to the other penalties set out for a first offense, if at the time of such offense the alcohol concentration in such person's blood or breath is twenty hundredths of one percent (.20%) or more, the minimum period of confinement for such person shall be seven (7) consecutive calendar days

rather than forty-eight (48) hours. The provisions of this subsection (a) constitute an enhanced sentence, not a new offense;

(B) Upon the second conviction shall be fined not less than six hundred dollars (\$600) nor more than three thousand five hundred dollars (\$3,500); be confined in the county jail or workhouse for not less than forty-five (45) days nor more than eleven (11) months and twenty-nine (29) days; and the court shall prohibit such person from hunting, fishing or trapping in this state for a period of two (2) years; and

(C) Upon the third conviction shall be fined not less than one thousand one hundred dollars (\$1,100) nor more than ten thousand dollars (\$10,000), and the person shall be confined in the county jail or workhouse for not less than one hundred twenty (120) days nor more than eleven (11) months and twenty-nine (29) days, and the court shall prohibit such person from hunting, fishing or trapping in this state for a period of three (3) years; and

(2) The fourth conviction or any subsequent conviction for a violation of § 70-4-601(a), is a Class E felony punishable by a fine of not less than three thousand dollars (\$3,000) nor more than fifteen thousand dollars (\$15,000); by confinement for not less than one hundred fifty (150) consecutive days, to be served day for day, nor more than the maximum punishment authorized for the appropriate range of a Class E felony; and the court shall prohibit the person from hunting, fishing or trapping in this state for a period of five (5) years.

(b)

(1) In addition to all other fines, fees, costs and punishments now prescribed by law, an alcohol and drug addiction treatment fee of one hundred

dollars (\$100) shall be assessed for each conviction for a violation of § 70-4-601(a).

(2) All proceeds collected pursuant to this subsection (b) shall be transmitted to the commissioner of the department of health for deposit in the special alcohol and drug addiction treatment fund administered by such department.

(c)

(1) A violation of the provisions of § 70-4-601(b) by a person age eighteen (18) or over but under age twenty-one (21) is a Class A misdemeanor punishable by a fine of two hundred fifty dollars (\$250). As additional punishment, the court shall prohibit the person from hunting, fishing or trapping in this state for one (1) year and the court may impose public service work.

(2) The delinquent act of underage hunting with a firearm while impaired for a person under the age of eighteen (18) is punishable by a fine of two hundred fifty dollars (\$250). As additional punishment, the court shall prohibit the person from hunting, fishing or trapping in this state for one (1) year and the court may impose public service work.

(3) A person under the age of eighteen (18) who commits the offense of underage hunting while impaired commits a delinquent act.

(d) Notwithstanding any other law to the contrary, in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census, upon conviction for a violation of § 70-4-601, the court shall assess against the defendant a blood alcohol concentration (BAT) test fee to be established by the county legislative body of any county to which this

subsection (d) applies in an amount not to exceed fifty dollars (\$50.00) for obtaining a blood sample for the purpose of performing a test to determine the alcoholic or drug content of the defendant's blood pursuant to § 70-4-604 that is incurred by the governmental entity served by the law enforcement agency arresting the defendant. The fee authorized by this subsection (d) shall only be assessed if a blood sample is actually taken from a defendant convicted of any such offenses and the test is actually performed on such sample.

§70-4-603.

(a) An offender sentenced to a period of incarceration for a violation of § 70-4-601(a), shall be required to commence service of such sentence within thirty (30) days of conviction or, if space is not immediately available in the appropriate municipal or county jail or workhouse within such time, as soon as such space is available. If, in the opinion of the sheriff or chief administrative officer of a local jail or workhouse, space will not be available to allow an offender convicted of a violation of § 70-4-601(a), to commence service of such sentence within ninety (90) days of conviction, the sheriff or administrative officer shall use alternative facilities for the incarceration of such offender. The appropriate county or municipal legislative body shall approve the alternative facilities to be used in such county or municipality.

(b) As used in this section, "alternative facilities" include, but are not limited to, vacant schools or office buildings or any other building or structure owned, controlled or used by the appropriate governmental entity that would be suitable for housing such offenders for short periods of time on an as-needed basis. A governmental entity may contract with another governmental entity or private corporation or person for the use of alternative facilities when needed and governmental entities may, by agreement, share use of alternative facilities.

(c) Nothing in this section shall be construed to give an offender a right to serve a sentence for a violation of § 70-4-601(a) in an alternative facility or within a specified period of time. Failure of a sheriff or chief administrative officer of a jail to require an offender to serve such a sentence within a certain period of time or in a certain facility or type of facility shall have no effect upon the validity of the sentence.

§ 70-4-604.

(a) As used in this section, unless the context otherwise requires:

(1) "Law enforcement officer" means any duly elected or appointed officer of the state of Tennessee or any county or municipal subdivision thereof charged with the conservation of the peace, or with the enforcement and policing of the provisions of this title or title 55, chapter 10; and

(2) "Test" means any chemical test designed to determine the alcoholic or drug content of the blood. The specimen to be used for such test shall include blood, urine or breath.

(b)

(1) Any person who engages in the act of hunting in this state is deemed to have given consent to a test or tests for the purpose of determining the alcoholic content of that person's blood, a test or tests for the purpose of determining the drug content of such person's blood, or both such tests.

However, no such test or tests may be administered pursuant to this section, unless conducted at the direction of a law enforcement officer having reasonable grounds to believe such person was hunting while under the influence of alcohol, a drug, any other intoxicant or any combination of alcohol, drugs, or other intoxicants as prohibited by § 70-4-601. For the results of such test or tests to be admissible as evidence, it must first be established that all tests administered

were administered to the person within two (2) hours following such person's arrest or initial detention.

(2) Any physician, registered nurse, licensed practical nurse, clinical laboratory technician, licensed paramedic, licensed emergency medical technician approved to establish intravenous catheters, or technologist, or certified or nationally registered phlebotomist who, acting at the written request of a law enforcement officer, withdraws blood from a person for the purpose of conducting either or both such tests, shall not incur any civil or criminal liability as a result of the withdrawing of such blood, except for any damages that may result from the negligence of the person so withdrawing. Neither shall the hospital nor other employer of the health care professionals listed in this subdivision (b)(2) incur any civil or criminal liability as a result of the act of withdrawing blood from any person, except for negligence.

(3) Any law enforcement officer who requests that the hunter submit to either or both tests authorized pursuant to this section, for the purpose of determining the alcohol or drug content, or both, of the hunter's blood, shall, prior to conducting either test or tests, advise the hunter that refusal to submit to the test or tests will result in the suspension by the court of the individual's hunting license. The court having jurisdiction of the offense for which such hunter was placed under arrest shall not have the authority to suspend the hunting license of a hunter who refused to submit to either or both tests, if the hunter was not advised of the consequences of such refusal.

(4)

(A) If such person, having been placed under arrest and then having been requested by a law enforcement officer to submit to either or

both such tests, and having been advised of the consequences for refusing to do so, refuses to submit, the test or tests to which the person refused shall not be given, and such person shall be charged with violating this section. The determination as to whether a hunter violated the provisions of this section shall be made at the same time and by the same court as the court disposing of the offense for which such hunter was placed under arrest. If the court finds that the hunter violated the provisions of this section, except as otherwise provided in this section, the hunter shall not be considered as having committed a criminal offense; however, the court shall revoke the license of such hunter for a period of:

(i) One (1) year, if the person does not have a prior conviction for a violation of § 70-4-601 in this state, or a similar offense in any other jurisdiction; or

(ii) Two (2) years, if the person does have a prior conviction for an offense set out in § 70-4-601.

(B) For the purposes of this section, “prior conviction” means a conviction for one (1) of the designated offenses, the commission of which occurred prior to the arrest giving rise to the instant implied consent violation.

(c) Any person who violates the provisions of this section by refusing to submit to either test or both such tests, pursuant to subdivision (b)(4), shall be charged by a separate warrant or citation that does not include any charge of violating § 70-6-401 that may arise from the same occurrence.

(d) Any person who is unconscious as a result of an accident or is unconscious at the time of arrest or apprehension or otherwise in a condition rendering that person



incapable of refusal, shall be subjected to the test or tests as provided for by this section, but the results thereof shall not be used in evidence against that person in any court or before any regulatory body without the consent of the person so tested. Refusal of release of the evidence so obtained will result in the suspension of that person's hunting license, thus such refusal of consent shall give such person the same rights of hearing and determinations as provided for conscious and capable persons in this section.

(e) Nothing in this section shall affect the admissibility in evidence, in criminal prosecutions, of any chemical analysis of the alcoholic or drug content of the defendant's blood which has been obtained by any means lawful without regard to the provisions of this section.

(f) Provided probable cause exists for criminal prosecution for the offense of hunting under the influence of an intoxicant under § 70-4-601, nothing in this section shall affect the admissibility into evidence in a criminal prosecution of any chemical analysis of the alcohol or drug content of the defendant's blood that has been obtained while the defendant was hospitalized or otherwise receiving medical care in the ordinary course of medical treatment.

(g)

(1) Upon the trial of any person charged with a violation of this part, the results of any test or tests conducted on the person so charged shall be admissible in evidence in a criminal proceeding.

(2) Failure of a law enforcement officer to request the administering of a test or tests shall likewise be admissible in evidence in a criminal proceeding.

(h) For the purpose of proving a violation of § 70-4-601(a), evidence that there was, at the time alleged, eight-hundredths of one percent (.08%) or more by weight of

alcohol in the defendant's blood shall create a presumption that the defendant's ability to hunt was sufficiently impaired thereby to constitute a violation of § 70-4-601(a).

(i)

(1) The results of any test authorized by this section shall be reported in writing by the person making such test, and such report shall have noted on it the time at which the sample analyzed was obtained from the person.

(2) The results of such test shall be made available to the person tested, upon request.

(j)

(1) The procurement of a sample of a person's blood for the purpose of conducting a test to determine the alcohol content, drug content, or both, of such blood as provided by this section, to be considered valid under this section, shall be performed by a registered nurse, licensed practical nurse, clinical laboratory technologist, clinical laboratory technician, licensed emergency medical technician, licensed paramedic or, notwithstanding any other provision of law to the contrary, licensed emergency medical technician approved to establish intravenous catheters, technologist, or certified or nationally registered phlebotomist or at the direction of a medical examiner or other physician holding an unlimited license to practice medicine in this state under procedures established by the department of health.

(2) Upon receipt of a specimen forwarded to the director's office for analysis, and the "toxicology request for examination" form, which shall indicate whether or not a breath alcohol test has been administered and the results of any such test, the director of the Tennessee bureau of investigation shall have the specimen examined for alcohol concentration, the presence of narcotics or other

drugs, or for both alcohol and drugs, if requested by the arresting officer, county medical examiner, or any district attorney general. The chief medical examiner or the medical examiner's duly appointed representative shall execute a certificate which indicates the name of the accused, the date, time and by whom the specimen was received and examined, and a statement of the alcohol concentration or presence of drugs of the specimen.

(3) When a specimen taken in accordance with the provisions of this section is forwarded for testing to the office of the director of the Tennessee bureau of investigation, a report of the results of such test shall be made and filed in that office, and a copy mailed to the district attorney general for the district where the case arose.

(4) The certificate provided for in this section shall, when duly attested by the director of the Tennessee bureau of investigation or the director's duly appointed representative, be admissible in any court, in any criminal proceeding, as evidence of the facts therein stated, and of the results of such test, if the person taking or causing to be taken the specimen and the person performing the test of such specimen shall be available, if subpoenaed as witnesses, upon demand by either party to the cause, or, when unable to appear as witnesses, shall submit a deposition upon demand by either party to the cause.

(5) The person tested shall be entitled to have an additional sample of blood or urine procured and the resulting test performed by any medical laboratory of that person's own choosing and at that person's own expense; provided, that the medical laboratory is licensed pursuant to title 68, chapter 29.

§ 70-4-605.

No judge of the general sessions court has jurisdiction to punish any person violating the provisions of this part under the small offense law.

§ 70-4-606.

The sheriff of each county shall develop a written policy which permits alcohol and drug treatment organizations to have reasonable access to persons confined in the county jail or workhouse who have been convicted of or charged with a violation of this part.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2007, the public welfare requiring it.